

By: Ellis

S.B. No. 797

A BILL TO BE ENTITLED

AN ACT

relating to a prescription drug purchasing program and an associated assistance program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. FAIR MARKET PRESCRIPTION DRUG PRICING AND
PRESCRIPTION DRUG ASSISTANCE PROGRAM

Sec. 531.401. PURPOSE. The purpose of this subchapter is to:

(1) reduce the cost of prescription drugs provided by the state through the Medicaid program and other state-funded programs;

(2) make prescription drugs more affordable for uninsured or underinsured state residents; and

(3) prevent uninsured and underinsured state residents from requiring assistance under the Medicaid program as a result of the inability of those residents to otherwise obtain medically necessary care due to excessive prescription drug prices.

Sec. 531.402. DEFINITIONS. In this subchapter:

(1) "Labeler" means a person that:

(A) has a labeler code from the Food and Drug Administration under 21 C.F.R. Section 207.20; and

(B) receives prescription drugs from a

1 manufacturer or wholesaler and repackages those drugs for later
2 retail sale.

3 (2) "Manufacturer" means a manufacturer of
4 prescription drugs as defined by 42 U.S.C. Section 1396r-8(k)(5),
5 including a subsidiary or affiliate of a manufacturer.

6 (3) "Wholesaler" means a person licensed under
7 Subchapter I, Chapter 431, Health and Safety Code.

8 Sec. 531.403. NEGOTIATED PRESCRIPTION DRUG REBATES AND
9 DISCOUNT PRICES. (a) The commission shall negotiate with
10 manufacturers and labelers to obtain rebates or discount prices for
11 prescription drugs sold in this state. In negotiating terms for
12 rebates or discount prices, the commission shall consider:

13 (1) rebates calculated under the Medicaid rebate
14 program in accordance with 42 U.S.C. Section 1396r-8;

15 (2) prices at which prescription drugs are provided to
16 eligible entities under 42 U.S.C. Section 256b; and

17 (3) any other available information on prescription
18 drug prices, rebates, or discounts.

19 (b) A manufacturer or labeler may voluntarily negotiate
20 with the commission and enter into an agreement to provide:

21 (1) supplemental rebates for prescription drugs
22 provided under the Medicaid program in excess of the rebates
23 required by 42 U.S.C. Section 1396r-8;

24 (2) rebates for prescription drugs provided under the
25 Tex-Rx card program established under Section 531.405; or

26 (3) rebates or discount prices for prescription drugs
27 provided under any other state program that pays for or acquires

1 prescription drugs.

2 Sec. 531.404. PRIOR AUTHORIZATION REQUIREMENTS. (a) If
3 the commission and a manufacturer or labeler fail to reach an
4 agreement on supplemental Medicaid rebates and rebates for the
5 Tex-Rx card program established under Section 531.405 resulting in
6 the availability of prescription drugs at prices available to
7 eligible entities under 42 U.S.C. Section 256b, the commission
8 shall:

9 (1) place the products of the manufacturer or labeler
10 on the state's list of products requiring prior authorization under
11 the Medicaid program or any other state-funded program; and

12 (2) post the name of the manufacturer or labeler on the
13 commission's Internet site.

14 (b) Placement of products on a prior authorization list in
15 accordance with this section must be conducted in a manner that
16 complies with 42 U.S.C. Section 1396r-8(d)(5).

17 (c) The commission shall distribute to physicians,
18 pharmacists, and other health professionals in this state
19 information regarding the relative costs of prescription drugs
20 provided by manufacturers and labelers who have entered into
21 agreements with the commission under this subchapter and
22 prescription drugs provided by manufacturers and labelers who have
23 not entered into agreements with the commission under this
24 subchapter.

25 Sec. 531.405. TEX-RX CARD PROGRAM: GENERAL PROVISIONS.

26 (a) Using rebates obtained through negotiations required by
27 Section 531.403, the commission shall establish a Tex-Rx card

1 program as a state pharmaceutical assistance program under 42
2 U.S.C. Section 1396r-8(c)(1)(C)(i)(III).

3 (b) The program does not pay for any prescription drug for
4 any program participant, but promotes the use of certain effective
5 prescription drugs by enabling participants to purchase those drugs
6 at a discounted price.

7 (c) The program shall provide discounted prices to program
8 participants for each prescription drug subject to a rebate through
9 an agreement under Section 531.403(b)(2).

10 (d) The commission shall contract with wholesalers or
11 retail pharmacies that voluntarily elect to participate in the
12 program as necessary to deliver discounted prices to program
13 participants.

14 (e) Subject to Subsection (f), a person is eligible to
15 participate in the program if the person is a resident of this state
16 and:

17 (1) is eligible for assistance under the Medicare
18 program; or

19 (2) has a net family income that is below 300 percent
20 of the federal poverty level.

21 (f) A person may not participate in the program if the
22 person is:

23 (1) eligible for assistance under the Medicaid
24 program; or

25 (2) covered by an insurance policy or health benefit
26 plan that provides benefits for prescription drugs at a level at
27 least equal to the benefits provided by the program, as determined

1 in accordance with commission rules.

2 (g) The commission shall engage in outreach activities to
3 publicize the availability of discounted prescription drug prices
4 under the program and shall establish simple procedures for
5 enrolling program participants.

6 Sec. 531.406. PARTICIPATING RETAIL PHARMACIES AND
7 WHOLESALEERS. (a) A retail pharmacy that voluntarily participates
8 in the Tex-Rx card program established under Section 531.405 shall
9 provide a prescription drug available through the program to a
10 program participant at a price not to exceed the sum of:

11 (1) the pharmacy's acquisition cost under the program;
12 and

13 (2) a dispensing fee in an amount equal to 105 percent
14 of the dispensing fee paid for providing the drug under the Medicaid
15 program.

16 (b) The commission by rule shall require a participating
17 retail pharmacy to:

18 (1) maintain a separate inventory of prescription
19 drugs obtained by the pharmacy under the program or segregate those
20 drugs from the pharmacy's other prescription drug stock;

21 (2) maintain separate records of acquisition and
22 disposition of prescription drugs obtained by the pharmacy under
23 the program, and ensure that all computer records regarding those
24 drugs are readily available to the commission; and

25 (3) return excess prescription drugs obtained by the
26 pharmacy under the program to the appropriate wholesaler from whom
27 the drugs were obtained.

1 (c) A participating retail pharmacy or wholesaler may not
2 resell or otherwise transfer a prescription drug obtained under the
3 program to:

4 (1) a retail pharmacy that is not participating in the
5 program; or

6 (2) a consumer who is not a program participant.

7 (d) If the commission, after notice and opportunity for a
8 hearing, determines that a participating retail pharmacy or
9 wholesaler has acted in violation of Subsection (c), the pharmacy
10 or wholesaler is liable to the manufacturer of the prescription
11 drug in an amount equal to the difference between:

12 (1) the retail price of the drug at the time of the
13 wrongful resale or transfer; and

14 (2) the price at which the drug was obtained by the
15 pharmacy or wholesaler under the program.

16 Sec. 531.407. REBATE DISPUTES OR DISCREPANCIES. (a) A
17 dispute or discrepancy in the amount of a rebate negotiated under
18 Section 531.403 must be resolved using the process established in
19 this section.

20 (b) The commission may hire an independent auditor
21 acceptable to all affected parties to perform an audit at the
22 commission's expense if there is a dispute or discrepancy in favor
23 of a manufacturer or labeler relating to the amount rebated for a
24 prescription drug provided by the manufacturer or labeler. If the
25 audit does not resolve the dispute or discrepancy, the manufacturer
26 or labeler shall:

27 (1) provide justification for the dispute or

1 discrepancy that is satisfactory to the commission; or

2 (2) pay the additional amount due.

3 (c) A manufacturer or labeler may hire an independent
4 auditor acceptable to all affected parties to perform an audit at
5 the expense of the manufacturer or labeler if there is a dispute or
6 discrepancy in favor of this state relating to the amount rebated
7 for a prescription drug provided by the manufacturer or labeler. If
8 the audit does not resolve the dispute or discrepancy, the
9 commission shall:

10 (1) provide justification for the dispute or
11 discrepancy that is satisfactory to the manufacturer or labeler; or

12 (2) refund to the manufacturer or labeler the amount
13 due.

14 (d) Any party not satisfied with the resolution of a dispute
15 or discrepancy in accordance with Subsection (b) or (c) may request
16 in writing a hearing before the State Office of Administrative
17 Hearings. The party must include supporting documentation with the
18 request for a hearing.

19 Sec. 531.408. RULEMAKING. The commission shall adopt rules
20 as necessary to administer this subchapter.

21 Sec. 531.409. ANNUAL REPORT. Not later than January 1 of
22 each odd-numbered year, the commission shall report to the
23 legislature on the commission's activities under this subchapter.
24 The report must include:

25 (1) the number of persons enrolled in the Tex-Rx card
26 program established under Section 531.405 and information
27 regarding the financial condition of that program; and

1 (2) the amount of savings achieved for the state as a
2 result of rebates and discount prices negotiated in accordance with
3 Section 531.403.

4 SECTION 2. If before implementing any provision of this Act
5 a state agency determines that a waiver or authorization from a
6 federal agency is necessary for implementation of that provision,
7 the agency affected by the provision shall request the waiver or
8 authorization and may delay implementing that provision until the
9 waiver or authorization is granted.

10 SECTION 3. (a) The Health and Human Services Commission
11 shall implement Sections 531.403 and 531.404, Government Code, as
12 added by this Act, not later than January 1, 2004.

13 (b) The Health and Human Services Commission shall
14 implement the Tex-Rx card program required by Sections 531.405 and
15 531.406 not later than January 1, 2005, if the commission
16 determines that adequate resources are available to support the
17 program as a result of the negotiations required by Section
18 531.403, Government Code, as added by this Act. If adequate
19 resources are not available to support implementation of the
20 program, the commission may delay implementation of the program
21 until adequate resources are available.

22 SECTION 4. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2003.